

ASSEMBLY BILL NO. 328—ASSEMBLYMEN GIUNCHIGLIANI, ANDERSON,
ARBERRY, BACHE, FREEMAN, GOLDWATER, OCEGUERA AND
WILLIAMS

MARCH 13, 2001

JOINT SPONSOR: SENATOR NEAL

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning sealing of criminal records and restoration
of civil rights. (BDR 14-122)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal records; requiring information concerning the sealing of records
and restoration of civil rights to be provided to certain persons; reducing the time
required to lapse before a petition to seal criminal records may be brought;
making various other changes concerning sealing criminal records; revising
provisions governing the restoration of civil rights; and providing other matters
properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 175 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 *Upon the entry of a judgment of acquittal, the court shall provide the*
4 *defendant with a written notice of the provisions of NRS 179.255 which*
5 *concern the sealing of records of the proceedings leading to the acquittal.*

6 **Sec. 2.** NRS 176A.850 is hereby amended to read as follows:

7 176A.850 1. A person who:

8 (a) Has fulfilled the conditions of his probation for the entire period
9 thereof;

10 (b) Is recommended for earlier discharge by the division; or

11 (c) Has demonstrated his fitness for honorable discharge but because of
12 economic hardship, verified by a parole and probation officer, has been
13 unable to make restitution as ordered by the court,



1 may be granted an honorable discharge from probation by order of the
2 court.

3 2. Any amount of restitution remaining unpaid constitutes a civil
4 liability arising upon the date of discharge.

5 3. A person honorably discharged from probation is free from the
6 terms and conditions of his probation and may apply to the court, in person
7 or by attorney, pursuant to NRS 176A.860, for the restoration of his civil
8 rights ~~†~~ *and, pursuant to NRS 179.245, for the sealing of records*
9 *relating to his conviction.* He must be informed of ~~this privilege~~ *these*
10 *privileges* in his probation papers.

11 4. A person honorably discharged from probation who has had his civil
12 rights restored by the court:

13 (a) Is exempt from the requirements of chapter 179C of NRS, but is not
14 exempt from the requirements of chapter 179D of NRS.

15 (b) May vote, hold office or serve as a juror.

16 (c) Shall disclose the conviction to a gaming establishment and the
17 state, its agencies, departments, boards, commissions and political
18 subdivisions, if required in an application for employment, license or other
19 permit. As used in this paragraph, "establishment" has the meaning
20 ascribed to it in NRS 463.0148.

21 (d) Except as otherwise provided in paragraph (c), need not disclose the
22 conviction to an employer or prospective employer.

23 5. The prior conviction of a person whose civil rights have been
24 restored or who has been honorably discharged from probation may be
25 used for purposes of impeachment. In any subsequent prosecution of the
26 person who has had his civil rights restored or who has been honorably
27 discharged from probation, the prior conviction may be pleaded and proved
28 if otherwise admissible.

29 **Sec. 3.** Chapter 178 of NRS is hereby amended by adding thereto a
30 new section to read as follows:

31 *Upon the entry of an order dismissing a criminal action or proceeding,*
32 *the court shall provide the defendant with a written notice of the*
33 *provisions of NRS 179.255 which concern the sealing of records of the*
34 *proceedings leading to the dismissal.*

35 **Sec. 4.** NRS 179.245 is hereby amended to read as follows:

36 179.245 1. Except as otherwise provided in subsection 5 and NRS
37 453.3365, a person who has been convicted of:

38 (a) Any felony may, after ~~†~~ *3* years from the date of his conviction
39 or, if he is imprisoned, *or on parole or probation*, from the date of his
40 release from actual custody ~~†~~ *, or discharge from parole or probation,*
41 *whichever occurs later;*

42 (b) Any gross misdemeanor may, after ~~†~~ *2* years from the date of his
43 conviction or *, if he is incarcerated or on probation, from the date of his*
44 release from custody ~~†~~ *or discharge from probation, whichever occurs*
45 *later;*

46 (c) A violation of NRS 484.379 other than a felony, or a battery which
47 constitutes domestic violence pursuant to NRS 33.018 other than a felony
48 may, after ~~†~~ *2* years from the date of his conviction or *, if he is*
49 *incarcerated or has had his sentence suspended, from the date of his*



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1 release from custody ~~H~~ *or from the date when he is no longer under a*
2 *suspended sentence, whichever occurs later;* or

3 (d) Any other misdemeanor may, after ~~15 years~~ *1 year* from the date of
4 his conviction or , *if he is incarcerated or has had his sentence*
5 *suspended, from the date of his* release from custody ~~H~~ *or from the date*
6 *when he is no longer under a suspended sentence, whichever occurs*
7 *later,*

8 petition the court in which the conviction was obtained for the sealing of
9 all records relating to the conviction.

10 2. A petition filed pursuant to subsection 1 must ~~be~~ :

11 (a) *Be* accompanied by current, verified records of the petitioner's
12 criminal history received from:

13 ~~(a)~~ (1) The central repository for Nevada records of criminal history;
14 and

15 ~~(b)~~ (2) The local law enforcement agency of the city or county in
16 which the conviction was entered ~~H~~ ;

17 (b) *Include a list of any other public or private agency, company,*
18 *official or other custodian of records that is reasonably known to the*
19 *petitioner to have possession of records of the conviction and to whom*
20 *the order to seal records, if issued, will be directed; and*

21 (c) *Include information that, to the best knowledge and belief of the*
22 *petitioner, accurately and completely identifies the records to be sealed.*

23 3. Upon receiving a petition pursuant to this section, the court shall
24 notify ~~H~~ *the law enforcement agency that arrested the petitioner for the*
25 *crime and:*

26 (a) ~~The~~ *If the person was convicted in a district court or justice's*
27 *court, the* prosecuting attorney for the county; or

28 (b) If the person was convicted in a municipal court, the prosecuting
29 attorney for the city.

30 The prosecuting attorney and any person having relevant evidence may
31 testify and present evidence at the hearing on the petition.

32 4. If, after the hearing, the court finds that, in the period prescribed in
33 subsection 1, the petitioner has not been ~~arrested,~~ *charged with any*
34 *offense for which the charges are pending or convicted of any offense,*
35 except for minor moving or standing traffic violations, the court may order
36 sealed all records of the conviction which are in the custody of the court, of
37 another court in the State of Nevada or of a public or private agency,
38 company or official in the State of Nevada, and may also order all such
39 criminal identification records of the petitioner returned to the file of the
40 court where the proceeding was commenced from, including, but not
41 limited to, the Federal Bureau of Investigation, the California identification
42 and investigation bureau, sheriffs' offices and all other law enforcement
43 agencies reasonably known by either the petitioner or the court to have
44 possession of such records.

45 5. A person may not petition the court to seal records relating to a
46 conviction of a crime against a child or a sexual offense.

47 6. *If the court grants a petition for the sealing of records pursuant to*
48 *this section, upon the request of the person whose records are sealed, the*



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court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.210.

(b) "Sexual offense" has the meaning ascribed to it in NRS 179D.410.

Sec. 5. NRS 179.255 is hereby amended to read as follows:

179.255 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, ~~not earlier than 30 days from~~ *at any time after* the date the charges were dismissed; or

(b) The court in which the acquittal was entered, ~~not earlier than 30 days from~~ *at any time after* the date of the acquittal,

for the sealing of all records relating to the arrest and the proceedings leading to the *dismissal or* acquittal.

2. A petition filed pursuant to this section must ~~be~~ :

(a) *Be* accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court ~~it~~ ;

(b) *Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal or acquittal and to whom the order to seal records, if issued, will be directed; and*

(c) *Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.*

3. Upon receiving a petition pursuant to this section, the court shall notify ~~it~~ *the law enforcement agency that arrested the petitioner for the crime and:*

(a) ~~it~~ *If the charges were dismissed or the acquittal was entered in a district court or justice's court, the* prosecuting attorney for the county; or

(b) If the charges were dismissed or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal *or dismissal* which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

Sec. 6. NRS 179.285 is hereby amended to read as follows:

179.285 Except as otherwise provided in NRS 179.301, if the court orders a record sealed pursuant to NRS 179.245, 179.255 or 453.3365 ~~it~~ *shall* :



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1 *1. All proceedings recounted in the record are deemed never to have*
2 *occurred, and the person to whom ~~the~~ the order pertains may properly*
3 *answer accordingly to any inquiry concerning the arrest, conviction ,*
4 *dismissal or acquittal and the events and proceedings relating to the arrest,*
5 *conviction , dismissal or acquittal.*

6 *2. Except as otherwise provided by specific statute, a public or*
7 *private employer in this state, including, without limitation, the State of*
8 *Nevada, any agency of this state and any political subdivision of the*
9 *state, shall not require a person to whom an order pertains to answer any*
10 *inquiry concerning the arrest, conviction, dismissal or acquittal and the*
11 *events and proceedings relating to the arrest, conviction, dismissal or*
12 *acquittal as a condition of his employment or his continued employment.*

13 **Sec. 7.** NRS 179.295 is hereby amended to read as follows:

14 179.295 1. The person who is the subject of the records that are
15 sealed pursuant to NRS 179.245, 179.255 or 453.3365 may petition the
16 court that ordered the records sealed to permit inspection of the records by
17 a person named in the petition, and the court may order such inspection.
18 Except as otherwise provided in this section and NRS 179.301, the court
19 may not order the inspection of the records under any other circumstances.

20 2. If a person has been arrested, the charges have been dismissed and
21 the records of the arrest have been sealed, the court may order the
22 inspection of the records by a prosecuting attorney upon a showing that as
23 a result of newly discovered evidence, the person has been arrested for the
24 same or similar offense and that there is sufficient evidence reasonably to
25 conclude that he will stand trial for the offense.

26 3. The court may, upon the application of a prosecuting attorney or an
27 attorney representing a defendant in a criminal action, order an inspection
28 of such records for the purpose of obtaining information relating to persons
29 who were involved in the incident recorded.

30 *4. This section does not prohibit a court from considering a*
31 *conviction for which records have been sealed pursuant to NRS 179.245,*
32 *179.255 or 453.3365 in determining whether to grant a petition pursuant*
33 *to NRS 179.245, 179.255 or 453.3365 for a conviction of another offense.*

34 **Sec. 8.** NRS 179A.160 is hereby amended to read as follows:

35 179A.160 ~~[At any time after a date 5 years after the arrest of a person,~~
36 ~~or after 5 years after the date of issuance of a citation or warrant, for an~~
37 ~~offense for which the person was acquitted or which ended in a disposition~~
38 ~~favorable to the person,]~~

39 *1. If a person has been arrested or issued a citation, or has been the*
40 *subject of a warrant for alleged criminal conduct and the person is*
41 *acquitted of the charge or the disposition of the charge is favorable to the*
42 *person, at any time after the charge is dismissed, acquittal is entered or*
43 *disposition of the charge in favor of the person is final,* the person who is
44 the subject of a record of criminal history relating to the arrest, citation or
45 warrant may apply in writing to the central repository and the agency
46 which maintains the record to have it removed from the files which are
47 available and generally searched for the purpose of responding to inquiries
48 concerning the criminal history of a person.



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1 2. The central repository and the agency shall remove the record
2 unless:
3 ~~1-1~~ (a) The defendant is a fugitive ~~+~~
4 ~~2-1~~ ;
5 (b) The case is under active prosecution according to a current
6 certificate of a prosecuting attorney ~~+~~
7 ~~3-1~~ ;
8 (c) The disposition of the case was a deferred prosecution, plea bargain
9 or other similar disposition ~~+~~
10 ~~4-1~~ ;
11 (d) The person who is the subject of the record has a prior conviction
12 for a felony or gross misdemeanor in any jurisdiction in the United States ~~+~~
13 ~~5-1~~ ; or
14 (e) The person who is the subject of the record has been arrested for or
15 charged with another crime, other than a minor traffic violation, ~~during the~~
16 ~~5-years~~ since the arrest, citation or warrant which he seeks to have
17 removed from the record.
18 3. This section does not restrict the authority of a court to order the
19 deletion or modification of a record in a particular cause or concerning a
20 particular person or event.
21 **Sec. 9.** NRS 209.511 is hereby amended to read as follows:
22 209.511 1. When an offender is released from prison by expiration of
23 his term of sentence, by pardon or by parole, the director:
24 (a) May furnish him with a sum of money not to exceed \$100, the
25 amount to be based upon the offender's economic need as determined by
26 the director ; ~~+~~
27 (b) Shall give him notice of the provisions of chapter 179C of NRS and
28 NRS 202.360 ; ~~+~~
29 (c) Shall require him to sign an acknowledgment of the notice required
30 in paragraph (b) ; ~~+~~
31 (d) *Shall give him notice of the provisions of NRS 179.245 and the*
32 *provisions of NRS 213.090, 213.155 or 213.157, as applicable;*
33 (e) May provide him with clothing suitable for reentering society ~~+~~
34 ~~(e)~~ ;
35 (f) May provide him with the cost of transportation to his place of
36 residence anywhere within the continental United States, or to the place of
37 his conviction ~~+~~
38 ~~(f)~~ ; and
39 (g) Shall require him to submit to at least one test for exposure to the
40 human immunodeficiency virus.
41 2. The costs authorized in paragraphs (a), ~~(d), (e) and~~ (e), (f) and (g)
42 of subsection 1 must be paid out of the appropriate account within the state
43 general fund for the use of the department as other claims against the state
44 are paid to the extent that the costs have not been paid in accordance with
45 subsection 5 of NRS 209.221 and NRS 209.246.
46 **Sec. 10.** NRS 213.090 is hereby amended to read as follows:
47 213.090 1. When a pardon is granted for any offense committed, the
48 pardon may or may not include restoration of civil rights. If the pardon
49 includes restoration of civil rights, it shall be so stated in the instrument or



1 certificate of pardon; and when granted upon conditions, limitations or
2 restrictions, they shall be fully set forth in the instrument.

3 2. In any case where a convicted person has received a pardon without
4 immediate restoration of his civil rights and has not been convicted of any
5 offense greater than a traffic violation within ~~15~~ 3 years after such pardon,
6 he may apply to the state board of pardons commissioners for restoration of
7 his civil rights and release from penalties and disabilities resulting from the
8 offense or crime of which he was convicted. If, after investigation, the
9 board determines that the applicant meets the requirements of this
10 subsection, it shall restore him to his civil rights and release him from all
11 penalties and disabilities resulting from the offense or crime of which he
12 was convicted. If the board refuses to grant such restoration and release,
13 the applicant may, after notice to the board, petition the district court in
14 which the conviction was obtained for an order directing the board to grant
15 such restoration and release.

16 **Sec. 11.** NRS 213.155 is hereby amended to read as follows:

17 213.155 1. The board may restore a paroled prisoner to his civil
18 rights, conditioned upon the prisoner receiving an honorable discharge
19 from parole pursuant to NRS 213.154. Such restoration must take effect at
20 the expiration of the parole of the prisoner.

21 2. In any case where a convicted person has completed his parole
22 without immediate restoration of his civil rights, has been issued an
23 honorable discharge from parole pursuant to NRS 213.154 and has not
24 been convicted of any offense greater than a traffic violation within ~~15~~ 3
25 years after completion of parole, he may apply to the state board of parole
26 commissioners for restoration of his civil rights and release from penalties
27 and disabilities which resulted from the offense or crime of which he was
28 convicted. The application must be accompanied by a current, certified
29 record of the applicant's criminal history received from the central
30 repository for Nevada records of criminal history. If, after investigation,
31 the board determines that the applicant meets the requirements of this
32 subsection, it shall restore him to his civil rights and release him from all
33 penalties and disabilities resulting from the offense or crime of which he
34 was convicted. If the board refuses to grant such restoration and release,
35 the applicant may, after notice to the board, petition the district court in
36 which the conviction was obtained for an order directing the board to grant
37 such restoration and release.

38 3. The board may adopt regulations necessary or convenient for the
39 purposes of this section.

40 **Sec. 12.** NRS 213.157 is hereby amended to read as follows:

41 213.157 In any case where a person convicted of a felony in the State
42 of Nevada has served his sentence and been released from prison, and has
43 not been convicted of any offense greater than a traffic violation within ~~15~~
44 3 years of his release, he may apply to the division requesting restoration of
45 his civil rights and release from all penalties and disabilities which resulted
46 from the offense or crime of which he was convicted. The application must
47 be accompanied by a current, certified record of the applicant's criminal
48 history received from the central repository for Nevada records of criminal
49 history. If, after investigation, the division determines that the applicant



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1 meets the requirements of this section, it shall petition the district court in
2 which the conviction was obtained for an order granting such restoration
3 and release. If the division refuses to submit such petition, the applicant
4 may, after giving notice to the division, petition such court directly for the
5 restoration of his civil rights and release from all penalties and disabilities
6 which resulted from the offense or crime of which he was convicted.

7 **Sec. 13.** The amendatory provisions of this act apply to:

8 1. A petition for an order to seal records pursuant to NRS 179.245 or
9 179.255 that is filed on or after the effective date of this act.

10 2. An application for restoration of civil rights pursuant to NRS
11 213.090, 213.155 or 213.157 that is filed on or after the effective date of
12 this act.

13 **Sec. 14.** This act becomes effective upon passage and approval.

